

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MELVIN BAEZ,

Plaintiff,

**ORDER and REPORT AND
RECOMMENDATION**

- v -

CV 10-3038 (BMC)(VVP)

SERGIO MAJURI,

Defendant.
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The *pro se* plaintiff Melvin Baez' motion for entry of a default judgment has been referred by the Honorable Brian M. Cogan to me for a report and recommendation. For the following reasons, I recommend that the motion be denied.

On September 15, 2010, the defendant filed a letter motion requesting an extension of time until November 15, 2010 to respond to the complaint. By letter dated September 21, 2010, the plaintiff objected to the defendant's motion for an extension of time, and also filed the current motion for a default judgment. It was the court's intention to grant the defendant's September 15 request for an extension of time, but due to an oversight the order was not entered on the docket. The court now grants, in part, the defendant's request for an extension of time, *nunc pro tunc*. The defendant shall respond to the complaint by October 31, 2010. Hence, the defendant is not in default, and therefore the undersigned recommends that plaintiff's motion for the entry of a default judgment be denied.

Any objections to the Report and Recommendation above must be filed with the Clerk of the Court within 14 days of receipt of this report. Failure to file objections within the specified time waives the right to appeal any judgment or order entered by the District Court in reliance on this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see, e.g.*,

Thomas v. Arn, 474 U.S. 140, 155, 106 S.Ct. 466, 474, 88 L.Ed.2d 435 (1985); *IUE AFL-CIO Pension Fund v. Herrmann*, 9 F.3d 1049, 1054 (2d Cir. 1993); *Frank v. Johnson*, 968 F.2d 298 (2d Cir.), *cert. denied*, 113 S. Ct. 825 (1992); *Small v. Secretary of Health and Human Serv.*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam).

SO ORDERED:

Viktor V. Pohorelsky
VIKTOR V. POHORELSKY
United States Magistrate Judge

Dated: Brooklyn, New York
October 4, 2010